

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

07 CIV. 6370

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RIVER PILE AND FOUNDATION CO., INC.,

Case No.

Plaintiff,

- against -

FIDELITY AND DEPOSIT COMPANY
OF MARYLAND,

Defendant.

(JURY TRIAL DEMANDED)

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WP4
COMPLAINT

FILED
U.S. DISTRICT COURT
2007 JUL 12 P 1:07
S.D. OF N.Y. W.P.

Plaintiff River Pile and Foundation Co., Inc. ("River Pile"), as for its complaint against defendant Fidelity and Deposit Company of Maryland, alleges upon information and belief as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction under 28 U.S.C. §1332, because there is complete diversity of citizenship between the parties hereto and because the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

2. Venue lies in this Judicial District under the provisions of 28 U.S.C. §1391(a), because a substantial part of the events or omissions giving rise to the claims asserted herein occurred within this Judicial District. White Plains is the proper assignment for this case within this Judicial District, pursuant to Rule 21(a) (iv) of the Local Rules of the United States District Courts for the Southern and Eastern Districts of New York, because River Pile resides in Westchester County.

PARTIES

3. At all times hereinafter mentioned, River Pile was and still is a corporation, duly organized and existing under the laws of the State of Delaware, having its principal place of business at 6 Executive Plaza, Yonkers, New York 10701.

4. At all times hereinafter mentioned, Fidelity and Deposit Company of Maryland was and still is a corporation, duly organized and existing under the laws of the State of Maryland, having its principal place of business at 3910 Keswick Road, Baltimore, Maryland 21203. Fidelity and Deposit Company of Maryland was and still is duly authorized to make and issue the payment bond hereinafter alleged.

BACKGROUND

5. Prior to September 27, 2006, Lettire Construction Corp. ("Lettire"), as contractor, and Albert Einstein College of Medicine of Yeshiva University (the "Albert Einstein College"), as owner, entered into an agreement (the "Construction Contract") for the construction of a new "AECOM Building", located at 1510 Waters Place, Bronx, New York (the "Project").

6. In furtherance of the Construction Contract, on or about September 27, 2006, River Pile entered into a subcontract agreement with Lettire (the "Subcontract"), pursuant to which River Pile agreed to provide all labor, materials and equipment required to perform, as per plans and specifications, driving, cutting, filling and testing of piles, and related materials thereto, for use and incorporation into the Project, for the agreed upon price and fair and reasonable value of \$225,000.00.

7. During the course of plaintiff's performance of the Subcontract, and at the special instance and request of Lettire, River Pile performed additional, extra and/or change order work for the agreed upon price and fair and reasonable value of \$108,500.00. As a result of the foregoing, the adjusted Subcontract price became \$333,500.00.

8. On or about and between September 27, 2006 and January 16, 2007, River Pile duly performed all of the terms and conditions required of it to be performed, in accordance with the

provisions of the Subcontract.

9. As a result of the foregoing, there became due and owing to River Pile from Lettire the agreed upon price and fair and reasonable value of \$333,500.00, no part of which has been paid or credited, except the sum of \$252,232, leaving a balance due of \$81,268.00, no part of which has been paid, although duly demanded.

10. By reason of the foregoing, Lettire is indebted to River Pile in the sum of \$81,268.00, together with interest thereon from January 16, 2007.

AS AND FOR A CLAIM FOR RELIEF
AGAINST FIDELITY AND DEPOSIT COMPANY OF MARYLAND
ON THE PAYMENT BOND

11. River Pile realleges each and every allegation set forth in paragraphs marked "1" through "10" above, with the same force and effect as if fully set forth at length herein.

12. Pursuant to the Construction Contract between Lettire and Albert Einstein College, Lettire agreed to and was obligated to furnish a labor and material payment bond for the payment of all claims for labor and materials used or reasonably required for use in the performance of the Construction Contract.

13. Thereafter, Lettire, as principal, and Fidelity and Deposit Company of Maryland, as surety, jointly and severally, for a valuable consideration, duly executed and furnished a labor and material payment bond (the "Payment Bond") in connection with the Project. A copy of said Payment Bond is attached hereto and is made a part hereof as Exhibit A.

14. The labor performed by River Pile was required to be performed and was actually performed, and the materials furnished by River Pile were required to be furnished and were actually furnished for the construction of the Project, and the aforesaid labor and materials were used or were

reasonably required for use in the performance of the Construction Contract.

15. River Pile has performed and satisfied all of the terms and conditions of the Payment Bond.

16. By reason of the foregoing, there is now due and owing to River Pile from Fidelity and Deposit Company of Maryland, as surety, the sum of \$81,268.00, together with interest thereon from January 16, 2007, pursuant to the terms of the Payment Bond.

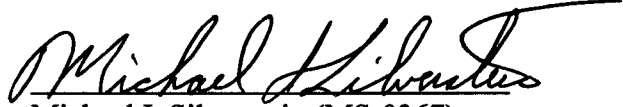
17. No part of said sum of \$81,268.00 has been paid, although duly demanded, leaving the sum of \$81,268.00, plus interest thereon from January 16, 2007, due and owing to River Pile from Fidelity and Deposit Company of Maryland, as surety.

WHEREFORE, plaintiff River Pile and Foundation Co., Inc. demands judgment against defendant Fidelity and Deposit Company of Maryland, on its claim for relief, for the sum of \$81,268.00, plus interest thereon from January 16, 2007; and for the costs and disbursements of this action, including reasonable attorneys' fees, and for such other and further relief as this Court deems just and proper under the circumstances.

Dated: White Plains, New York
July 11, 2007

WELBY, BRADY & GREENBLATT, LLP

By:



Michael I. Silverstein (MS-0367)

Attorneys for Plaintiff

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JURY TRIAL DEMANDED